
**APPEALS BOARD
UTAH LABOR COMMISSION**

LUANN JUSTESEN,

Petitioner,

vs.

**CONVERGYS and FIDELITY
AND GUARANTY INSURANCE
COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0742

LuAnn Justesen asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's denial of Ms. Justesen's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Justesen claims workers' compensation benefits from Convergys and its insurance carrier, Fidelity and Guaranty Insurance Company, (referred to jointly as "Convergys") for a work accident that occurred on November 29, 2004, allegedly causing injury to her back. In her claim for benefits, Ms. Justesen requested permanent total disability compensation, medical expenses, and recommended medical care.¹ Judge Lima held an evidentiary hearing and then appointed a medical panel. After reviewing the panel's report, Judge Lima dismissed Ms. Justesen's claims.

In her motion for review, Ms. Justesen argues that she should be awarded additional medical expenses and temporary partial disability compensation. She also requests that the attorney's lien filed on this case be waived.

FINDINGS OF FACT

The Appeals Board adopts Judge Lima's findings of fact. The facts material to the motion for review are as follows: On November 29, 2004, Ms. Justesen slipped and fell while at work and was treated for low back pain. Since the injury, Ms. Justesen incurred \$13,000 in medical expenses, which the parties agreed Respondent had paid. No further evidence of any outstanding medical expenses was presented or claimed at the hearing.

¹ Ms. Justesen initially requested temporary total disability benefits, but later withdrew this claim.

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DISCUSSION AND CONCLUSIONS OF LAW

The primary question at issue in the motion for review is whether the Appeals Board should disturb the evidentiary record and permit Ms. Justesen to submit additional evidence to support her claims. The Commission's Rules provide, under R602-2-1(I)(8), that "[s]ubject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge."

In her motion for review, Ms. Justesen claims additional medical expenses that were not previously submitted. Rule R602-2-1(I)(5) provides that "[t]he petitioner shall appear at the hearing prepared to outline the benefits sought, such as . . . the amounts of unpaid medical bills" At the time of the hearing, the parties agreed that Respondent had paid outstanding medical bills to date in the amount of \$13,000.00. No additional claims were made at that time for any remaining unpaid bills. The bills Ms. Justesen provided to the Appeals Board for unpaid medical expenses, all predated the hearing. The Appeals Board declines to reopen the evidentiary record to include bills that Ms. Justesen had ample opportunity previously to provide.

Ms. Justesen also argues, for the first time, that she is entitled to temporary partial disability compensation for the six months when she was able to work only part-time. The Commission's rules are also applicable here. Under Commission Rule R602-2-1(I)(3), all parties were to have filed, no later than 45 days prior to the scheduled hearing, a pretrial disclosure form that identifies ". . . (5) the specific benefits or relief claimed by petitioner." The rule also provides that the pretrial disclosure may be supplemented as information becomes available. Up to the date of the hearing, there is no evidence that Ms. Justesen made such a claim, nor has Ms. Justesen indicated that she previously made such a claim. The Appeals Board has also reviewed the hearing tape to determine whether this issue was raised before Judge Lima and has not located any reference to a claim for these benefits. Therefore, the Appeals Board will not order benefits for a claim that was never previously presented.

The Appeals Board notes that Ms. Justesen requests that the attorney's fee lien, which was filed on her case, be waived. Under Rule R602-2-4, attorney fees are based upon, and generally deducted from, a successful applicant's award of benefits. Because Ms. Justesen was not awarded benefits, there can be no award for attorney's fees. Accordingly, it is unnecessary to waive the lien. Based on the foregoing, the Appeals Board declines to disturb the evidentiary record to include claims never previously raised or presented, and therefore affirms Judge Lima's decision.

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ORDER

The Appeals Board affirms Judge Lima's decision. It is so ordered.

Dated this 2nd day of May, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.